IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.1042/1999
(Govind Ram Acharya Vs. High Court & Anr.)

Date of order : 17.12.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Ms. Deepika Vyas, for the petitioner.
Mr. K.L. Thakur, Addl. Adv. General with
Mr. S.N. Tiwari, Dy. G.A. for State.

By way of filing the present writ petition, the petitioner has prayed for directions to the respondents to take him back in service with all consequential benefits. It is further prayed that the respondents may be directed to cancel the interview which took place on 12.3.1999.

According to the facts inter alia stated in the writ petition, the petitioner has applied for appointment on the post of Class-IV employee in pursuance of the advertisement issued by the respondent No.2 on 5.6.1998. The said advertisement was issued in accordance with the the Rajasthan Class-IV Service (Recruitment & Service Conditions) Rules, 1963 (hereinafter “the Rules of 1963” only). The petitioner was fulfilling the qualification prescribed

for the post and was eligible to be called for interview. Therefore, he was called for interview and after interview, he was provided appointment being a successful candidate vide appointment order dated 16.7.1998 by the District & Sessions Judge, Jaisalmer. The petitioner was posted at Chief Judicial Magistrate, Jaisalmer and his basic salary was fixed as Rs.2550/- plus admissible allowances. As per the appointment order, the petitioner was provided appointment for a period of three months and it was specifically mentioned that his services can be terminated either on the ground of unsatisfactory services or on any administrative grounds without giving any prior notice.

The term of services of the petitioner was extended after completion of first tenure mentioned in the appointment order upto 28.2.99. He continued on the said post during the extended time. The tenure of the services of the petitioner was not extended and his service were come to an end w.e.f. 28.2.1999. Before expiry of term of services of the petitioner, an advertisement was issued on 19.2.1999, inviting applications for recruitment to the post of Class-IV employees under the Rules of 1963. The petitioner preferred this writ petition inter alia on the ground that his work was found satisfactory and he was duly selected candidate though appointment was given for a period of three months but the post upon which he was

appointed was substantive in nature and appointment was to be given on probation in accordance with the Rules of 1963 but he was given appointment for a period of three months. Thereafter, it was extended upto 28.2.1999 along with two other candidates.

Learned counsel for the petitioner argued that though the appointment of the petitioner was made after following the procedure as provided under the Rules of 1963 against the substantive post also but it was made as temporary appointment and after 28.2.1999, the tenure of the petitioner was not extended though his work was satisfactory and no memo or letter for explanation was given during his working by his immediate superior. Therefore, the non-extension of his term was totally arbitrary and illegal. Further, it is argued by the learned counsel for the petitioner that similarly situated persons were allowed to continue on the said post and they are in service till today.

According to the learned counsel for the petitioner before refusing the extension of service, the respondent No.2 has issued an advertisement for recruitment on the post and in all two vacancies were advertised and it is mentioned in the advertisement that appointments were made in accordance with the Rules of 1963. While challenging the said advertisement, the petitioner has prayed for

continuity in service on the ground that there was nothing adverse against the petitioner for which the extension of tenure of his appointment ought not to have been refused, therefore, it is obvious that the respondent's action is not only arbitrary and unreasonable but also violative of Articles 14 and 16 of the Constitution of India because similarly situated persons were allowed to continue on the post and his tenure was not extended on the ground that the appointment was made purely on temporary basis and the work of the petitioner was not satisfactory. The main ground for refusal of extension of tenure is based on the ground that the petitioner's work was not found to be satisfactory by the respondents. Further it is submitted that the performance of the work was not upto the mark on the post, therefore, his term was not extended after 28.2.1999. It is further prayed by learned Addl. Advocate General that there is no right created in favour of the petitioner after 28.2.1999 – the time enumerated in the order of extension. Discontinuance of the services of the petitioner is on the ground of unsatisfactory work of the petitioner.

This Court vide order dated 6.12.2007 issued directions to Dy. Govt. Advocate to submit the record of selection made in pursuance of Annexure-P/1 dated 5.6.1998 and next date was fixed as 8.12.2007. On 8.12.2007, again it was ordered that record of determination of vacancies of Class-IV employees of

the Jaisalmer Judgeship as well as the record of file in which the petitioner's case was considered for not extending his term of appointment be produced before this Court. Today, learned Addl. Advocate General has produced certain photostat copies of the proceedings including the factual report. No file or reasons for not extending the terms of appointment of the petitioner has been produced before this Court. It is admitted by Addl. Advocate General appearing on behalf of the respondents that there is no record of recording unsatisfactory work of the petitioner. The term of the appointment was not extended only on the basis of oral report of his immediate superior.

I have considered the rival submissions and perused the entire record of the case. It is true that extension of time of an employee in service is left with the employer but it is the duty of the employer to consider entire service record so also if anything adverse is reported to the appointing authority for not extending time. Here in this case, admittedly no memo was given to the petitioner neither any explanation was sought from the petitioner nor any unsatisfactory report was submitted before the appointing authority upon which the extension of service was to be refused. It is also obvious from the record of the case that the appointment was made after following the procedure laid down in the Rules of 1963. It is also not disputed that similarly

situated persons were allowed to continue on the post and they are in service. Meaning thereby, the refusal of extension of term of the petitioner's service was totally lacking feet. Similarly when a specific order was made to produce the file in which the case of the petitioner was considered but it was not produced before the Court. Moreso, the respondents are stating at Bar that no such decision was taken upon the file for non-extension of the service tenure of the petitioner. As such it is clear from the facts that refusal of term of services of the petitioners was arbitrary and discriminatory. Therefore, it is violative of Article 14 of the Constitution of India.

In these circumstances, it can be said that the service of the petitioner was not extended without any reasons, so also in arbitrary manner. Likewise, similarly situated persons who were appointed like the petitioner were allowed to continue on the post whereas no order was issued for continuity of service of the petitioner though appointment was made after following the procedure laid down in the Rules of 1963 but subject to satisfactory work it was to be extended. There is no record produced by the respondents upon which it can be said that the work of the petitioner was not satisfactory or his performance was not upto the mark. In these circumstances, the candidate like the petitioner who was possessing the requisite qualification and was provided appointment after following the procedure laid down in the Rules

of 1963, he was very much entitled for continuity of service as provided to the other similarly situated persons who were appointed along with the petitioner. When there is no report on record with regard to his unsatisfactory work, then, only recourse is left to this Court to direct the respondents to take back the petitioner in service and to allow him to work on the post upon which he was appointed after due selection in accordance with rules.

Accordingly, this writ petition is allowed. The respondents are directed to take the petitioner back on duty forthwith and grant him benefits which are extended to the similarly situated persons, who were appointed along with the petitioner in pursuance of the advertisement Annexure-P-1. Further, it is made clear that in the event of reinstatement of the petitioner, the petitioner will not be entitled to back wages from 1.3.1999 to the date of this order but he shall be entitled to all notional benefits because the petitioner has not worked from the date of his non-extension of his service till today. The petitioner shall be entitled to seniority and continuity in service etc. except back wages.

(GOPAL KRISHAN VYAS), J.

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